



PATENT
Docket No. 400-009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Andrea F. Bell

Entitled: UTILITY APRON

Filed: July 28, 1997

Serial No.: 08/901,713

) Group Art Unit: 3728

) Examiner: J. Foster

Assistant Commissioner for Patents
U.S. PATENT AND TRADEMARK OFFICE
Washington, D.C. 20231

BRIEF ON APPEAL

In response to the final Office Action dated March 6, 2002, Applicant submits herewith this Brief on Appeal in triplicate, as required by 37 C.F.R. § 1.192. A Notice of Appeal was filed on July 8, 2002. A Petition for a one-month extension of time and associated fee are being filed concurrently herewith. Applicant respectfully submits that this appeal is proper, because the claims have been twice and finally rejected.

(1) REAL PARTY IN INTEREST

The real party in interest is Andrea F. Bell.

(2) RELATED APPEALS AND INTERFERENCES

Applicant is unaware of any related appeals and/or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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(3) STATUS OF THE CLAIMS

Claims 1-31 remain pending.

Claims 1-31 stand rejected.

**(4) STATUS OF AMENDMENTS FILED SUBSEQUENT TO FINAL
REJECTION**

Applicant has not filed any amendments subsequent to the final rejection of March 6, 2002.

(5) CONCISE EXPLANATION OF THE INVENTION

The invention relates to a utility apron useful for retaining various items such as cleaning items and, more specifically, to utility aprons for use with support devices, such as buckets, cans, frames, and the like. (See, e.g., specification at page 1, lines 4-8).

Utility aprons known in the field prior to Applicant's invention were primarily used for, and adapted for use with, tools. The primary reference relied upon by the examiner, i.e., U.S. Patent No. 4,993,551 (hereinafter "Lindsay") is an example.

Applicant, perhaps in a novel application, sought to use a utility apron type design in other applications, specifically including use as a storage and transportation device for cleaning items that might be used in cleaning, for example, a commercial or residential building.

In her efforts to use such device in this apparently novel environment, however, Applicant discovered a number of limitations with such devices. As outlined in the specification, for example, at page 2:

[s]uch apron designs typically have been limited, for example, in that they are not of suitable size and shape for appropriate retention of a wide range of items. They also have not generally been of suitable size and shape for retaining cleaning items, such as items used in the cleaning of residences and other buildings, and in other cleaning applications. Moreover, the designs typically are not particularly well suited to securely retaining items of varying sizes within the pockets and easily releasing them from the recesses or pockets.

The present invention overcomes these problems by providing a utility apron particularly useful for retaining items, preferably items of various sizes and shapes, and more preferably cleaning products and cleaning tools. (See, e.g., page 3, lines 4-9).

In accordance with a first aspect of the present invention as defined in claims 1-9, 27, and 28, a utility apron 10 according to a preferred embodiment is provided for use on a support device 12 having an interior 12d, an exterior 12e, an opening 12a, a lip 12c at the opening, and a longitudinal axis 12f. Utility apron 10 comprises a shell 13 having a lip portion 13c for contacting the lip of the support device and an exterior surface 13b for disposition at the exterior of the support device. Utility apron 10 further comprises a pocket 14 disposed upon the exterior surface of the shell away from the longitudinal axis. The pocket includes a resilient opening 18, the size of the opening being variable depending upon the extent to which the resilient opening is extended. (See, e.g., page 4, lines 2-11).

In accordance with a second aspect of the present invention as defined in claims 10-18, 29, and 30, a utility apron is provided for use on a support device having an interior, an exterior, an opening, a lip at the opening, and a longitudinal axis. The utility apron of this second aspect of the invention comprises a shell having a lip portion for contacting the lip of the support device and an interior surface for disposition at the interior of the support device. The utility apron further comprises a pocket disposed upon the interior surface of the shell toward the longitudinal axis. The pocket includes a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended. (See, e.g., page 4, lines 12-20).

In accordance with a third aspect of the present invention as defined in claims 19-26 and 31, a utility apron is provided for use on a support device having an interior, an exterior, an opening, a lip at the opening, and a longitudinal axis. The utility apron of this third aspect of the invention comprises a shell having a lip portion for contacting the lip of the support device. The shell further comprises an interior surface for disposition at the interior of the support device and toward the longitudinal axis, and an exterior surface for disposition at the exterior of the support device and away from the longitudinal axis. The utility apron further comprises a first pocket and a second pocket respectively disposed upon the interior surface and the exterior surface of the shell. Each of the pockets includes a resilient opening of variable size depending upon the extent to which the resilient opening is extended. (See, e.g., page 4, lines 2-23).

According to one preferred embodiment of each of these aspects of the invention, the pocket comprises a pliable material, and the resilient opening comprises a strip of resilient material affixed to the pliable material. (See, e.g., page 11, lines 16-20).

According to other preferred embodiments of each of these aspects of the invention, the resilient opening is between about 4 and 7 inches wide, more preferably 4.75 inches wide, in a normal unstretched position. (See, e.g., page 6, lines 3-6).

According to further preferred embodiments of these aspects of the invention, the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 7.5 inches, 8 inches, 8.5 inches, or 9 inches when the item is placed in the pocket. (See, e.g., page 6, lines 6-14).

According to still another preferred embodiment of each of the aspects of the invention, each of the pockets includes a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended.

The pockets preferably comprise a pleated pliable material. (See, e.g., page 11, lines 15-16).

(6) *CONCISE EXPLANATION OF THE ISSUES PRESENTED FOR REVIEW*

(1) Whether U.S. Patent No. 3,678,977 to Baumgartner (hereinafter “Baumgartner”) is analogous art and may be properly relied upon in an obviousness rejection of claims 1-31 under 35 U.S.C. § 103(a);

(2) Whether claims 1-31 are obvious under 35 U.S.C. § 103(a) (hereinafter “Section 103”) over Lindsay in view of Baumgartner;

(3) Whether U.S. Patent No. 5,431,265 to Yoo (hereinafter “Yoo”) is analogous art and may be properly relied upon in an obviousness rejection of claims 1-31 under 35 U.S.C. § 103(a); and

(4) Whether claims 1-31 are obvious under Section 103 over Lindsay in view of Baumgartner, and further in view of Yoo.

(7) *GROUPING OF THE CLAIMS*

Claims 1, 2, 9-11, 18-20, and 27-31 stand or fall together.

Claims 3, 12, and 21 stand or fall together.

Claims 4, 13, and 22 stand or fall together.

Claims 5, 14, and 23 stand or fall together.

Claims 6, 15, and 24 stand or fall together.

Claims 7, 16, and 25 stand or fall together.

Claims 8, 17, and 26 stand or fall together.

(8) **ARGUMENTS**

(A) ***The Section 103 Rejection of Claims 1-31 as Being Obvious Over Lindsay and Baumgartner is Misplaced and Should be Reversed***

1. ***Baumgartner is Not Analogous Prior Art and, Therefore, Cannot Properly Be Considered Under Section 103***

The Examiner's reliance on Baumgartner is misplaced and improper under the facts and circumstances of this case because Baumgartner is non-analogous art.

Two criteria have evolved for determining whether prior art is analogous in the context of an obviousness analysis: (1) whether the art is from the same field of endeavor, regardless of the problem addressed; and (2) if the reference is not within the field of the inventor's endeavor, whether the reference is still reasonably pertinent to the particular problem with which the inventor is involved. In re Clay, 996 F.2d 656, 23 U.S.P.Q.2d (BNA) 1058, 1060 (Fed. Cir. 1992); In re Oetiker, 997 F.2d 1443, 24 U.S.P.Q.2d (BNA) 1443, 1445 (Fed. Cir. 1992).

In considering the field or fields to which an inventor would have looked in order to solve the problem he or she confronted, one must remain cognizant of the fact that "[p]atent examination is necessarily conducted by hindsight, with complete knowledge of the applicant's invention." In re Oetiker, 24 U.S.P.Q.2d at 1445.

A precise definition of the problem the inventor confronted also is important in determining whether a reference should be characterized as non-analogous art. As the Board stated in Ex Parte Dussaud, 7 U.S.P.Q.2d (BNA) 1818, 1819-20 (Bd.

Pat. App. & Interferences June 9, 1988), “[d]efining the problem too narrowly may result in excluding consideration of relevant prior art. By the same token, defining the problem too broadly, as done here, may result in considering prior art as “analogous” which is inconsistent with real world considerations.” (citing Panduit Corp. v. Dennison Mfg. Co., 774 F.2d 1082, 227 USPQ 337 (Fed. Cir. 1985), vacated, 475 U.S. 809, 229 USPQ 478 (1986), aff’d on remand, 810 F.2d 1561, 1 U.S.P.Q.2d 1593 (Fed. Cir. 1987)).

Applicant’s invention is a utility apron for use on a support device having an interior, an exterior, an opening, a lip at the opening, and a longitudinal axis. The utility apron comprises an opening having, inter alia, a resilient opening. The dependent claims recite various dimensions that specifically enable the apron to securely retain such things as cleaning items.

Baumgarten discloses an over arm carrying bag, which from the disclosure functions as a purse. Applicant has consistently taken the position, and reaffirms it here, that the field of purses or over arm carrying bags is not the field of Applicant’s endeavor, i.e., utility aprons and more specifically utility aprons suitable for use in securely storing and transporting items such as cleaning items for commercial residential buildings and the like. This is supported, for example, by the different areas of classification of the cited and applied references. Baumgartner, for example, lists Class 150, subclasses 30 and 33, whereas Lindsay’s tool holder is classified primarily in class 206, subclass 373, and secondarily in class 150, subclass 161. Utility aprons simply are not the same as purses. One of ordinary skill in the

art, seeking to improve upon utility aprons, would not have turned to the field of over arm carrying bags to find solutions. Carrying bags are not designed or intended for use on a support device, such as bucket, having an interior, an exterior, an opening, and a lip at the opening. These fields share little if any commonality of subject matter and intended use.

Nor does Baumgartner involve a field reasonably pertinent to the particular problem with which Applicant was concerned. Again, Applicant's invention addressed the problem of utility aprons, and the general inability of prior art utility aprons, particularly those that had been used for tools, to securely retain cleaning items for use in such things as cleaning of residential and commercial buildings. Baumgartner, in contrast, is directed to the problem of providing a purse that is capable of carrying a variety of items, most of which appear to be related to general shopping (see, e.g., col. 1, lines 1-40), and which is adapted to be relatively invulnerable to thieves, e.g., so the pockets are not accessible to a would-be thief (see, e.g., col. 2, lines 44-45) and so the person carrying it can securely grip it and prevent it from being stolen (see the Abstract). Baumgartner says nothing about utility aprons, nor does it say anything regarding problems associated with cleaning items. Baumgartner, taken as a whole and without improperly relying on the hindsight afforded by Applicant's invention, also says nothing about addressing the problem of storing and transporting cleaning items so they are securely retained yet readily available to the user. Indeed, it would appear that the only reason Baumgartner was cited and applied is that the key word segment "clean" appears in

the form of "cleansing tissues," e.g., at col. 1, line 28 and col. 2, line 23.

Baumgartner appears to provide no other reference to cleaning items, and even this reference does not address the problem of providing a utility apron capable of securely retaining such cleaning items.

Accordingly, Applicant stands by her position that Baumgartner is non-analogous art under either prong of the non-analogous art test. The declarations submitted in this application and of record in the case further support this conclusion. As in other cases of this type, the reference sought to be applied in an obviousness rejection simply is not sufficiently related to the invention and the problem it addressed, and its application cannot fairly be made absent improper reliance on hindsight. Ex Parte Dussaud, 7 U.S.P.Q.2d (BNA) 1818, 1819 (Bd. Pat. App. & Interferences, June 9, 1988) (the field of manufacturing disposable diapers found non-analogous with respect to the inventor's field of carpet manufacture); In re Clay, 966 F.2d 656, 23 U.S.P.Q.2d 1058 (Fed. Cir. 1992) (a process for reducing the permeability of hydrocarbon bearing formations and thus improving oil production, using a gel similar to that in Clay's invention, was found non-analogous to the applicant's process for storing refined liquid hydrocarbon product in a storage tank having a dead volume between the tank bottom and its outlet port, in which the process involved preparing a gelation solution which gels after it is placed in the tank's dead volume); In re Oetiker, 977 F.2d 1443, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992) (a plastic hook and eye fastener for use in garments, in which "unitary tabs of sewing needle puncturable plastic material . . . are affixable to clothing and the

like by sewing" was found non-analogous to applicant's invention, which was an improvement in a "stepless, earless" metal clamp, a hose clamp that was generally described in an earlier '004 patent of Oetiker, but that differs in the presence of a feature that is described as a preassembly "hook," wherein the "hook" served both to maintain the preassembly condition of the clamp and to be disengaged automatically when the clamp is tightened).

2. *Even if Baumgartner Were To Be Deemed Analogous Prior Art, Which It is Not, a Prima Facie Case of Obvious Has Not Been Established Under Section 103.*

a. *Claims 1, 2, 9-11, 18-20, and 27-31*

It is fundamental law that it is improper under Section 103 to use hindsight reconstruction to pick and choose among isolated disclosure in the prior art to create a finding of obviousness as to the claimed invention. In re Fritch, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). Teachings of references can be combined only if there is some suggestion or motivation to do so. Smithkline Diagnostics, Inc. v. Helena Lab. Corp., 859 F.2d 878, 886-87, 8 U.S.P.Q.2d (BNA) 1468 (Fed. Cir. 1988).

Applicant respectfully stands by her position that independent claims 1, 10, and 19 patentably distinguishes over Lindsay because Lindsay fails to disclose or suggest a utility apron in a combination of elements which comprises a shell having lip portion for contacting the lip of the support device and interior and/or exterior surfaces for disposition at the supporting device's interior and/or exterior, respectively, and which further comprises a pocket or pockets disposed upon the interior and/or exterior surfaces of the shell, the pocket(s) including a resilient

opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended.

Lindsay discloses a tool holder with pockets, wherein the tool holder is used with a 5-gallon bucket to hold carpenter or tradesman tools. Lindsay fails to disclose a utility apron wherein any of the pockets have a resilient opening, and wherein the size of the opening is variable depending upon the extent to which the resilient opening is extended. The examiner has conceded this point, for example, in the Office Action of March 6, 2002 at page 3.

The claimed apron solves problems implicit in the Lindsay design. The resiliency of the pockets of the claimed apron conveniently retains items such as cleaning products, canisters, bottles, and other items for storage and organization. The resiliency of the pockets of the claimed invention fulfills a long-felt need in the art by making it easier for the user's hand to fit inside of the pocket for placement of such items into the pockets, by significantly reducing the susceptibility of the pockets to ripping, etc.

Even if Baumgartner were deemed analogous prior art, which Applicant submits it is not, a person having ordinary skill in the art at the time the invention was made would not have been motivated to combine Lindsay and Baumgartner. Neither Baumgartner nor Lindsay provides the legally requisite motivation to extend or otherwise apply their teachings to one another. Lindsay says nothing about the problem of items falling out of the pockets, and is silent with regard to such items as cleaning items. Baumgartner also provides no teaching or suggestion

to apply its over arm carrying bag disclosure to utility aprons or any other support device having an interior, exterior, an opening, and a lip at the opening.

Baumgartner fails even to mention such aprons. Moreover, as noted above, Baumgartner, taken as a whole and without relying upon hindsight, does not fairly teach or suggest modifications necessary to retain cleaning items, particularly not in a general application such as for use in cleaning residential or commercial buildings, wherein a range of cleaning items might be needed. Nor does Lindsay provide any suggestion to look to or otherwise rely on carrying bag arts.

For these reasons, each of independent claims 1, 10, and 19 are patentable over Lindsay in view of Baumgartner, and the Section 103 rejection should be reversed.

Dependent claims 2, 9, 11, 18, 20, and 27-31 also patentably distinguish over Lindsay and Baumgartner, taken alone or in combination, for the reasons set forth above with respect to claims 1, 10, and 19 from which they depend.

b. Claims 3-8, 12-17, and 21-26

With regard to the Examiner's repeated citation of In re Rose, 105 U.S.P.Q. 237 and In re Yount, 80 U.S.P.Q. 141 against claims pertaining to the sizes of the openings, Applicant submits these cases are specific to their facts. There are no blanket prohibitions of patentability where size is a distinguishing feature. The Court of Appeals for the Federal Circuit has made amply clear in numerous reported decisions that claimed inventions are to be viewed as a whole. In re Dillon, 919 F.2d 688, 16 U.S.P.Q.2d (BNA) 1897 (Fed. Cir. 1990) (en banc), cert.

denied, 500 U.S. 904 (1991). To the extent size is a feature that distinguishes a claimed invention viewing the claim as a whole, and as here, where that feature provides an advantage not disclosed or suggested in the prior art, patentability may not be precluded based on some overriding proposition that size alone cannot afford a ground for patentability. Size indeed can play a role in patentability. See, e.g., Kloster Speedsteel AB v. Crucible Inc., 230 U.S.P.Q. (BNA) 81, 86 (Fed. Cir. 1986).

Claims 3, 12, and 21 recite that the resilient opening is between 4 and 7 inches wide in a normal unstretched position.

Claims 4, 13, and 22 recite that the resilient opening is about 4.75 inches wide in normal unstretched position.

Claims 5, 14, and 23 recite that the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 7.5 inches when the item is placed in the pocket.

Claims 6, 15, and 24 recite that the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 8 inches when the item is placed in the pocket.

Claims 7, 16, and 25 recite that the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 8.5 inches when the item is placed in the pocket.

Claims 8, 17, and 26 recite that the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 9 inches when the item is placed in the pocket.

Each of these ranges is designed for retaining items particular to the cleaning arts, such as approximately 16 oz to 28 oz size liquid-containing bottles. In this regard, claims 5-8, 14-17, and 23-26 are specifically directed to pockets sized to hold bottle-like items having a circumference.

Lindsay is directed to a tool-holder. Tools generally have a substantially flat perimeter or small diameter design, and do not require resilient pockets of the sizes set forth in the above-mentioned dependent claims. Baumgartner discloses pockets for holding “a pad and pencil, a pen, cleansing tissues, gloves, or the like.” (See, e.g., col. 2, lines 20-29). None of the items mentioned in Baumgartner are bottle-like or have a circumference that would mandate the claimed pocket sizes. Contrary to the Examiner’s position, other than mentioning “cleansing tissues,” Baumgartner also does not teach or reasonably suggest that its pockets may be used for holding “cleaning items” such as liquid-containing bottles.

3. *Even if a Prima Facie Case of Obvious Has Been Established, Which It Has Not, Evidence of Indicia of Nonobviousness Would Rebut the Prima Facie Case.*

Applicant submitted Declarations of Gary Cohen (hereinafter the “Cohen Declaration”) and Andrea F. Bell (hereinafter the “Bell Declaration”) on January 7, 2002 and a Declaration of George Millican, Jr. (hereinafter the “Millican Declaration”) on March 23, 2001. These Declarations are incorporated herein.

a. *The Cohen Declaration*

As set forth in the Cohen Declaration, Mr. Cohen has had regular involvement with the design, selection, repair, maintenance, and/or use of utility

aprons. His Declaration provides further support for the position that persons of ordinary skill in the art at the time the invention was made would have considered the claimed invention as providing an unexpected advantage and addressing a solution to a long-felt need in the art, i.e., indicia of non-obviousness. Mr. Cohen states that in his experience in the utility apron art, conventional utility aprons were not adapted to place an elastic portion at the opening of the apron pockets. Mr. Cohen further states that the claimed invention's addition of the elastic portion at the opening of the apron pockets permits the pockets of the claimed apron to securely retain items typically used in household or interior building cleaning, such as fluid bottles. (See paragraph 11 of Cohen Declaration).

The Examiner opines that he was not persuaded that the Cohen Declaration demonstrated long felt need, because, in the Examiner's words, "the declaration calls for the unmet need to be unrecognized (part 11)." (Final Office Action, pages 8-9.) The Examiner has read a one-word excerpt from the Cohen Declaration completely out of context, and ignored other pertinent information in the Cohen Declaration in doing so. Paragraph 9 of the Cohen Declaration states that conventional utility aprons were similar to that of Lindsey inasmuch as the aprons "were used primarily if not exclusively for holding and carrying tools." The fact that there was a "previously unrecognized and unmet need" to modify the conventional aprons to have resilient openings speaks to the lack of motivation in the art for modifying the conventional utility aprons. The Cohen Declaration also addresses another indicia of non-obviousness, i.e., unexpected results.

The Examiner also discredits the Cohen Declaration as “conclusory” for not citing “facts and dates that would indicate that there was a long-felt need existence.” Applicant disagrees. The Cohen Declaration sets forth facts specifically establishing Mr. Cohen’s knowledge and familiarity with the art over the relevant time period. Further, Mr. Cohen’s Declaration establishes on its face his status as a person skilled in the utility apron art. It also presents his opinion as such a skilled artisan, which directly bears on the obviousness question under Section 103.

Finally, it is not clear what “facts and dates” the Examiner is looking for, and Applicant takes issue with any suggestion that a specific set of facts as called for by the Examiner are required. The Cohen Declaration states that Hometown Advantage sold cleaning aprons in the 1993 time frame. Mr. Cohen cannot reasonably be expected to list each date on which he encountered a cleaning apron that differed from the claimed invention. Applicant respectfully submits that the Examiner’s expectations for establishing indicia of nonobviousness as set forth in the Office Action exceed those of the Graham test.

b. The Bell Declaration

The Bell Declaration sets forth evidence of indicia of non-obviousness in the form of a long-felt need and commercial success. Applicant, Ms. Bell, states in paragraph 6 of her Declaration that commercial aprons similar to that of Lindsay were designed for holding tools with relatively stiff or rigid pockets without much flexure. This design made the commercial aprons non-conductive to use in the art of cleaning. Ms. Bell found that the design of conventional aprons made it difficult to

insert, see, securely retain, and remove cleaning items, and often made the pocket of the conventional aprons susceptible to ripping. Ms. Bell also declares as to the commercial success enjoyed by her product, ABC POCKETS®, embodying the claimed invention. Approximately 4,000 units of ABC POCKETS® had been sold as of that date. Retailers such as Ace Hardware and Wal-Mart have been among the purchasers of ABC-POCKETS®.

The Examiner's criticisms of the Bell Declaration are unreasonable and place an onerous and legally unwarranted burden on Applicant to collect a plethora of data and reproduce records that, in many cases, are years old. Further, the information sought by the Examiner is not necessarily relevant for the present purposes. For example, the Examiner states that he cannot determine the importance of 4,000 of the claimed invention without knowing the percentage of "the pocket caddy market this represents," and how much "Applicant invested in marketing and advertising." (Final Office Action, page 7). Applicant is unaware of any case law that sets forth a specific percentage of overall market share that must be realized before commercial success is established in this market.

The Examiner also requests specific data relating to the details of Ms. Bell's transactions with retailers. Applicant respectfully submits that the mere fact that national retailers such as Ace Hardware and Wal-Mart showed interest in the claimed invention speaks volumes for its inventiveness and commercial worth. Financial sales data is not the only means by which commercial success may be shown.

The Bell Declaration provides evidence of compliments received from purchasers and potential purchasers at the Sacramento Home Show and the Arizona Family Women's Expo. The Examiner apparently deems this evidence unpersuasive, inter alia, because Applicant did not explain whether customers were "asked" about problems with non-elastic pockets before they commented on the difference between elastic and non-elastic pockets. Applicant respectfully fails to understand why such undue significance is placed upon the details of how these compliments were obtained from the purchasers. Surely a purchaser's comments would not have greater or lesser significance merely because they were elicited by a question rather survey.

c. The Millican Declaration

The Millican Declaration provides further support for the position that the claimed invention would not have been obvious to persons of ordinary skill in the art at the time the invention was made. Mr. Millican is an experienced practitioner in the residential and commercial building-cleaning field. His Declaration states that, despite the apparent existence of pockets with resilient openings in unrelated fields such as those of Baumgartner and Yoo as shown in those documents, practitioners in the cleaning field did not look to such unrelated fields for a solution to the problems addressed and solved by the claimed invention in utility aprons.

(b) *The Section 103 Rejection of Claims 1-31 as Being Obvious Over Lindsay and Baumgartner, Further in View of Yoo, is Misplaced and Should be Reversed*

1. *Yoo Also is Not Analogous Prior Art and, Therefore, Cannot Properly Be Considered Under Section 103*

Applicant reaffirms her position that the combination using Lindsay and Baumgartner, further in view of Yoo, is improper because Baumgartner and Yoo constitute non-analogous art. Applicant hereby incorporates by express reference and reaffirms the positions and responses set forth in Section (8)(a)(1), as if fully set forth here.

Yoo is directed to a sports accessory bag for containing various items of clothing and sports articles, such as tennis rackets and the like. Such bags are not within the Applicant's field of endeavor of utility aprons for items such as cleaning items. Thus, Yoo fails to qualify as analogous art under the first prong of the test for non-analogous art.

Yoo also fails to qualify under the second prong because it is not reasonably pertinent to the particular problem with which Applicant was concerned. Yoo is directed to the problem of needing multiple storage bags for different types of sports related items, such as clothing, tennis rackets, etc., and for different types of weather. See, e.g., col. 1, lines 13-54.

Applicant finds nothing in Yoo that addresses or otherwise mentions or suggests problems associated with utility aprons and their ability to accommodate and securely retain such cleaning items as bottles, etc. used in cleaning things such

as residential and commercial buildings. Yoo simply is in a field of endeavor to which a person of ordinary skill in the art would look in addressing limitations of utility aprons. The Declarations support this conclusion as well. Yoo therefore is non-analogous with respect to Applicant's claims under both prongs of the test.

For this reason alone, the Section 103 rejection of claims 1-31 should be withdrawn.

2. *Even if Baumgartner and Yoo Were to be Deemed Analogous Prior Art, a Prima Facie Case of Obvious Has Not Been Established Under Section 103.*

Applicant hereby incorporates by express reference and reaffirms the positions and responses set forth in Section (8)(a)(2), as if fully set forth here.

Even if Baumgartner and Yoo were to be considered analogous, which Applicant submits they should not, Yoo fails to provide a suggestion or motivation to apply its teachings to utility aprons. Applicant can find no suggestion in Yoo that its teachings can or should be applied to any articles other than accessory bags. There is no indication or suggestion that the teachings of Yoo may be applied to utility aprons. Applicant respectfully takes issue with the Examiner's position that the article-holding pockets of Yoo themselves provide suggestion enough. It is Applicant's position that the nature of the article that contains the pocket is relevant. An argument that the mere existence of a pocket, regardless of the type of article, can be considered sufficient motivation or suggestion can only be carried if one relies, impermissibly, on hindsight afforded by the invention.

For these additional reasons, Applicant respectfully requests reversal of the Section 103 rejection of claims 1-31.

3. *Even if a Prima Facie Case of Obvious Is Deemed To Have Been Established, Which It Has Not, Evidence of Indicia of Nonobviousness Would Rebut the Prima Facie Case.*

Applicant hereby incorporates by express reference and reaffirms the positions and responses set forth in Section (8)(a)(3), as if fully set forth here.

For these additional reasons, the Section 103 rejection of claims 1-31 should be withdrawn.

(9) CONCLUSION

For all the above-discussed reasons, it is clear that the inventions recited in Applicant's claims are patentable over the art of record. Accordingly, reversal of the remaining rejections and allowance of claims 1-31 are respectfully requested.

Attached is a check for \$215 to cover the fee for this Brief on Appeal. If any additional fees are due in connection with the filing of this Brief on Appeal, please charge our Deposit Account No. 501324 and accept this paper as a petition for extension.

Dated: October 9, 2002

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen T. Sullivan", written in a cursive style.

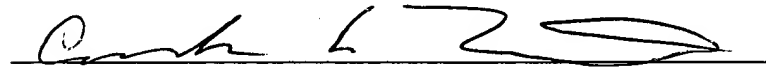
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Date of Deposit: October 8, 2002

I hereby certify that this Brief on Appeal, in triplicate, is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed Assistant Commissioner for Patents, Patent & Trademark Office, Washington, D.C. 20231.

A handwritten signature in black ink, appearing to read "Mark L. Z...", is written over a horizontal line.

(10) APPENDIX: CLAIMS ON APPEAL

1. A utility apron for use on a support device having an interior, an exterior, an opening, a lip at the opening, and a longitudinal axis, the utility apron comprising:

a shell having lip portion for contacting the lip of the support device and an exterior surface for disposition at the exterior of the support device; and

a pocket disposed upon the exterior surface of the shell away from the longitudinal axis, the pocket including a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended.

2. A utility apron as recited in claim 1, wherein the pocket comprises a pliable material, and the resilient opening comprises a strip of resilient material affixed to the pliable material.

3. A utility apron as recited in claim 1, wherein the resilient opening is between about 4 and 7 inches wide in a normal unstretched position.

4. A utility apron as recited in claim 1, wherein the resilient opening is about 4.75 inches wide in a normal unstretched position.

5. A utility apron as recited in claim 1, wherein the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 7.5 inches when the item is placed in the pocket.

6. A utility apron as recited in claim 1, wherein the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 8 inches when the item is placed in the pocket.

7. A utility apron as recited in claim 1, wherein the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 8.5 inches when the item is placed in the pocket.

8. A utility apron as recited in claim 1, wherein the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 9 inches when the item is placed in the pocket.

9. A utility apron as recited in claim 1, wherein the utility apron includes a plurality of pockets disposed upon the exterior surface of the shell away from the longitudinal axis, each of the pockets including a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended.

10. A utility apron for use on a support device having an interior, an exterior, an opening, a lip at the opening, and a longitudinal axis, the utility apron comprising:

a shell having lip portion for contacting the lip of the support device and an interior surface for disposition at the interior of the support device; and

a pocket disposed upon the interior surface of the shell toward the longitudinal axis, the pocket including a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is

extended.

11. A utility apron as recited in claim 10, wherein the pocket comprises a pliable material, and the resilient opening comprises a strip of resilient material affixed to the pliable material.

12. A utility apron as recited in claim 10, wherein the resilient opening is between about 4 and 7 inches wide in a normal unstretched position.

13. A utility apron as recited in claim 10, wherein the resilient opening is about 4.75 inches wide in a normal unstretched position.

14. A utility apron as recited in claim 10, wherein the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 7.5 inches when the item is placed in the pocket.

15. A utility apron as recited in claim 10, wherein the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 8 inches when the item is placed in the pocket.

16. A utility apron as recited in claim 10, wherein the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 8.5 inches when the item is placed in the pocket.

17. A utility apron as recited in claim 10, wherein the pocket is sized to contain an item having a circumference perpendicular to the longitudinal axis of about 9 inches when the item is placed in the pocket.

18. A utility apron as recited in claim 10, wherein the utility apron includes a plurality of pockets disposed upon the exterior surface of the shell away

from the longitudinal axis, each of the pockets including a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended.

19. A utility apron for use on a support device having an interior, an exterior, an opening, a lip at the opening, and a longitudinal axis, the utility apron comprising:

a shell having lip portion for contacting the lip of the support device, an interior surface for disposition at the interior of the support device and toward the longitudinal axis of the support device, and an exterior surface for disposition at the exterior of the support device and away from the longitudinal axis of the support device;

a first pocket disposed upon the interior surface of the shell, and a second pocket disposed upon the exterior surface of the shell, each of the first and second pockets including a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended.

20. A utility apron as recited in claim 19, wherein each of the first and second pockets comprises a pliable material, and the resilient opening of each of the first and second pockets comprises a strip of resilient material affixed to the pliable material.

21. A utility apron as recited in claim 19, wherein at least one of the pocket openings is between about 4 and 7 inches wide in a normal unstretched position.

22. A utility apron as recited in claim 19, wherein at least one of the resilient openings is about 4.75 inches wide in a normal unstretched position.

23. A utility apron as recited in claim 19, wherein at least one of the pockets is sized to contain an item having a circumference of about 7.5 inches.

24. A utility apron as recited in claim 19, wherein at least one of the pockets is sized to contain an item having a circumference of about 8 inches.

25. A utility apron as recited in claim 19, wherein at least one of the pockets is sized to contain an item having a circumference of about 8.5 inches.

26. A utility apron as recited in claim 19, wherein at least one of the pockets is sized to contain an item having a circumference of about 9 inches.

27. A utility apron as recited in claim 1, wherein the pocket includes at least one pleat.

28. A utility apron as recited in claim 9, wherein each of the pockets of the plurality of pockets includes at least one pleat.

29. A utility apron as recited in claim 10, wherein the pocket includes at least one pleat.

30. A utility apron as recited in claim 18, wherein each of the pockets of the plurality of pockets includes at least one pleat.

31. A utility apron as recited in claim 19, wherein at least one of the first and second pockets includes at least one pleat.